

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

BEFORE: JAMES M. WICKS, U.S. MAGISTRATE JUDGE

DATE: 03/07/2024

TIME: 10:00 AM

☐ SEALED PROCEEDING

CIVIL CAUSE FOR PRE-MOTION CONFERENCE

CASE: 2:23-cv-01668-JMA-JMW-Winters v. Phountain PH Holdings Corp. et al.

APPEARANCES:

For Plaintiff: Joshua Mathew Friedman

Defendant (Phountain PH Holdings Corp.): No Appearance

For Defendant (Patrick Cooley): Cory H. Morris

Court Reporter/FTR: 10:00-10:18 (Video)

THE FOLLOWING RULINGS WERE MADE:

- ☒ Pre-motion conference held on Defendant's anticipated Motion to Dismiss (ECF No. [19]) and Defendant's Motion to Dismiss Defendant Phountain PH Holdings Corp.'s ("Phountain") cross-claims (ECF No. [21]). Discussion was held on the anticipated motions.
- ☒ On or before **March 15, 2024**, Counsel for Cooley shall file a letter advising whether he intends to move forward on the motion to dismiss or interpose and answer with the intention of later moving for summary judgment.
- ☒ The Court has determined that Phountain is in default, given that it failed to appear through counsel by February 19, 2024 (ECF No. [40]) as it is required to do. Accordingly, on or before **March 15, 2024**, Counsel for Plaintiff shall request that the Clerk of the Court enter default as to Phountain.
- ☒ Defendant Cooley's anticipated motion to dismiss the cross-claims (ECF No. [21]) is deemed **withdrawn without prejudice** until default is entered against Phountain. Following the entry of default, Counsel for Cooley may renew his motion to dismiss the cross-claims based on the default. In addition, Counsel for Cooley raised a question regarding the prior motion for sanctions against Phountain (ECF Nos. [34] and [36]), however that motion was denied without prejudice (ECF No. [40]). To the extent sanctions are sought against Phountain, they may include this request for relief in their respective motions for default judgment and to dismiss the cross-claims.

- ☒ Per the Hon. Joan M. Azrack's Electronic Order referring all dispositive motions (*see* Electronic Order dated Feb. 20, 2024), any future dispositive motions shall be addressed to the undersigned.

SO ORDERED

/s/ James M. Wicks

JAMES M. WICKS

United States Magistrate Judge